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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,198	04/14/2004	Aric Benedict	3308-053	5865

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EXAMINER

DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/824,198	BENEDICT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark A. Deuble	3651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8-14,16-23,27-31,33-39,41-54 and 57-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 57-59 is/are allowed.
- 6) ☒ Claim(s) 1-6,8-14,16-23,27-31,33-39,41-54 and 60-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6,8-14,16-23,27-31,33-39,41-54 and 60-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1, 22, 27, 51 and 60-61 all recite "a cantilevered deck." While the belt and deck are cantilevered when the support arm 42 is swung down to the position illustrated in Fig. 4 to enable the conveyor belts to be changed, the belt and the deck are not cantilevered during the normal operation of the conveyor because the arm 42 supports the distal end of the deck and conveyor belt when operating. Therefore it is misleading to characterize the belt and deck as cantilevered resulting in ambiguity about the scope of the present invention.

In response to applicant's comments, it is noted that while some leeway should be accorded to applicant in describing its inventions, such leeway shall not be so great as to render the scope of the claims unclear. Furthermore, the claims have not been amended along lines suggested by the Examiner as no such suggestions were made by the examiner.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 51 is rejected under 35 U.S.C. 102(b) as being anticipated by Cotter et al.

Cotter et al. shows a cantilevered conveying belt assembly 210 comprising a cantilevered deck 214. The cantilevered deck includes a first belt 230a and a second belt 230g that is shorter than the first belt. The shorter belt is positioned on the cantilevered deck so that one end wraps around the roller 224 proximal to the unsupported end of the cantilevered deck.

In regard to the added limitations of claim 51 in the thereby clause, it should be noted that this passive language does nothing to distinguish the structure of the present invention from that of Cotter et al. Furthermore, while Cotter et al. does not discuss removal and replacement of the belts, the either the first or second belt could be replaced without removal of the other belt by, for example, removing the cantilevered belt assembly from the conveyor 212 to which it is connected and removing the side member 218 so that the belts could be slid off in a sideways fashion. Thus Cotter et al. shows all the structure required by claim 51.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 52-54 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cotter et al. in view of Nystrom.

In regard to claim 52, Cotter et al. shows generally all the structure required by the claims including a deck 214 with a plurality of tubes formed on the lower edges of the members 216 and 218 to receive bolts (see Fig. 10). However, while the members

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216 and 218 resemble extruded members in cross section, Cotter et al. does not disclose how the tubes are formed on the members 216 and 218. However the Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature” than when a product is claimed in the conventional fashion. In re Fessmann, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). In regard to claims 53-54

Cotter et al. shows generally all the structure required by the claims except for a belt tension assembly. Nystrom shows a chain conveyor tension assembly 9 attached to a conveyor deck 1. The assembly includes a roller support 3, a roller support rod 10 for movably connecting the roller support to a deck, a compression spring 17 between the roller support rod and the deck, and a spring adjustment assembly. The spring adjustment assembly includes a first fixed spring stop 14, a second moveable spring stop 10, and an actuator for adjusting the position of the second moveable spring stop. The actuator includes a threaded rod 24, a sliding nut 23, and a spring drive 28 on one end of the threaded bolt. Nystrom teaches that this tensioning device advantageously automatically maintains tension on the conveyor, takes up slack in the conveyor while preventing oscillation of the spring. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the tensioning device of Nystrom on the assembly of Cotter et al. to maintain tension and take up slack on the

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conveyor belts 15. When this is done, the resulting apparatus would have all the structure required by claims 53-54.

In regard to claim 60, it should be noted that the apparatus of Cotter et al may be viewed as including a frame 214, 216, 218 with a cantilevered deck comprised of rollers 224, 226, 228 with a plurality of conveyor belts thereon. The deck is attached to vertical support walls of the frame members 216, 218 that are attached to a horizontal deck mounting surface via a nut bar (see Fig. 11). With the tensioner taught by Nystrom, the apparatus would show all the structure required by claim 60.

In regard to applicant's comments that claim 60 is a combination of claims 1, 9, 10, and 11 that was indicated as allowable in the previous office action, the Examiner finds these comments misleading as this combination of claims was not previously indicated as allowable without intervening claim 7.

***Allowable Subject Matter***

7. Claims 1, 22, 27 and 61 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. Claims 2-6, 8-14, 16-21, 23, 28-31, 33-39, and 41-50 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claims 57-59 are allowed.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

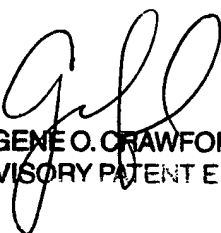
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

md

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER